

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-130349-08

Date:

September 10, 2008

### Legend

Taxpayer =

StateX =

Exchange =

Year1 =

Dear :

This ruling responds to your letter dated July 8, 2008, as well as subsequent correspondence, submitted on behalf of Taxpayer, requesting a ruling under Internal Revenue Code (the "Code") sections 301 and 305 (the "Ruling Request").

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### SUMMARY OF FACTS

Taxpayer is an accrual basis StateX corporation that files its federal income tax returns as a real estate investment trust ("REIT") on a calendar year basis. Taxpayer represents that it qualifies as a REIT under the Code, that it intends to maintain such qualification as a REIT, and that it regularly distributes its earnings and profits as required under section 857(a)(1).

Taxpayer has one class of common stock outstanding (the "Common Stock"), which is publicly traded and listed on the Exchange. All references below to "stockholder" refer to holders of Common Stock.

Subject to the approval of its Board of Directors, Taxpayer intends to make a special dividend (the "Special Dividend") on its Common Stock for the fourth quarter of Year1, as described below. The total amount of cash payable in the Special Dividend will be limited to approximately 20 percent or more of the total value of the Special Dividend; in no event will the total amount of cash available be less than 20 percent of the total value of the Special Dividend. Notwithstanding the foregoing, prior to declaring the Special Dividend, Taxpayer's Board of Directors may determine to increase the total amount of cash payable in the Special Dividend to more than 20 percent of the total value of the Special Dividend, but in such case it will not raise such cash limit amount to more than 80 percent of the total amount of the Special Dividend. In such event, all references below to a 20 percent cash limit, including the Mixed Option, as defined below, will refer instead to the greater cash limit.

Each stockholder will have the right to elect to receive cash, Common Stock of equivalent value (determined as close to the distribution date as reasonably practicable), or a combination thereof, as follows:

Option A – 100 percent cash (the "Cash Option");

Option B – 100 percent stock (the "Stock Option"); or

Option C – a combination of 20 percent cash and 80 percent stock (the "Mixed Option").

Taxpayer expects to declare the Special Dividend using the following election mechanism.

Taxpayer will provide to each stockholder an election form for the Special Dividend shortly after the record date for the Special Dividend. Each stockholder may elect to receive its dividend in the form of the Cash Option, the Stock Option, or the Mixed Option by the election deadline. If a stockholder fails to make a valid election by the election deadline, that stockholder will be deemed to have elected the Stock Option. To the extent necessary, Taxpayer will issue cash in lieu of fractional shares of Common Stock. Any shares of Common Stock paid in the Special Dividend will be subject to the same limitations on share ownership as apply to other shares of Common Stock currently outstanding that are imposed by Taxpayer's charter (such limitations, the "Excess Share Clause"). Taxpayer does not anticipate that any stockholder's receipt of the Special Dividend will be affected by the Excess Share Clause. Taxpayer intends to distribute its Special Dividend as soon as reasonably practicable following the date of the election deadline.

While each stockholder will have the option to elect to receive cash in lieu of stock for all or a portion of the stockholder's entire entitlement under the Special Dividend, Taxpayer intends to limit the amount of cash to be distributed in the aggregate to approximately 20 percent or more of the Special Dividend (such amount, the "Cash Limit"). Any cash issued in lieu of fractional shares of Common Stock will not count towards the Cash Limit. In no event will the total amount of cash available be less than 20 percent of the total value of the Special Dividend.

If the total number of shares of Common Stock with respect to which the Cash Option or the Mixed Option is made ("Cash Election Shares") would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limit, then all holders of Cash Election Shares will receive cash equal to the amount elected; the stockholders who elect the Cash Option will receive the Special Dividend entirely in cash, and the stockholders who elect the Mixed Option will receive the Special Dividend in 20 percent cash and 80 percent stock.

If the number of shares with respect to which the Cash Option and Mixed Option is made is such that the Cash Limit would be exceeded, then (i) stockholders electing to receive the Mixed Option will receive 20 percent of the Special Dividend in cash, with the remainder being received in shares of Common Stock, and (ii) stockholders electing to receive the Cash Option will receive a pro rated portion of the remaining available cash (i.e., the Cash Limit minus the aggregate amount of cash payable to stockholders electing the Mixed Option), with the remainder being received in shares of Common Stock. Based on this formula, in no case will Cash Election Shares receive less than 20 percent of the Special Dividend in cash.

### RULINGS

Based solely on the information provided and the representations made, we rule as follows with respect to the Special Dividend. Any and all of the cash and stock distributed in the Special Dividend (as described above) by Taxpayer shall be treated as a distribution of property with respect to its stock to which section 301 applies. Sections 301 and 305(b). The amount of the distribution of the stock received by any stockholder electing to receive stock will be considered to equal the amount of the money which could have been received instead. §1.305-1(b)(2).

### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code. Furthermore, no opinion

is expressed with regard to whether the Special Dividend constitutes a Preferential Dividend under section 562(c) of the Code.

#### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

*T. Ian Russell*

T. Ian Russell  
Senior Counsel, Branch 5  
Office of Associate Chief Counsel  
(Corporate)